

AMENDED IN SENATE JUNE 18, 2012

AMENDED IN SENATE JUNE 6, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1736

Introduced by Assembly Member Smyth

February 16, 2012

An act to amend Sections 54954.2, 54954.5, and 54957 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1736, as amended, Smyth. Local government: open meetings.

The Ralph M. Brown Act requires each legislative body of a local agency to provide the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public. Under the act, all persons are permitted to attend any meeting of the legislative body of a local agency, unless a closed session is authorized. Under the act, the legislative body of a local agency is authorized to hold closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, as specified, or a threat to the public's right of access to public services or public facilities.

This bill would authorize the legislative body of a local agency to hold these closed sessions with the Governor and ~~any necessary staff designated by the Governor. The bill would make a conforming change to a related provision.~~ *other specified individuals. This bill would require*

a legislative body of a local agency that meets in these specified types of a closed session to include additional information in its posted agenda regarding those in attendance.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54954.2 of the Government Code is
2 amended to read:

3 54954.2. (a) (1) At least 72 hours before a regular meeting,
4 the legislative body of the local agency, or its designee, shall post
5 an agenda containing a brief general description of each item of
6 business to be transacted or discussed at the meeting, including
7 items to be discussed in closed session. A brief general description
8 of an item generally need not exceed 20 words. The agenda shall
9 specify the time and location of the regular meeting and shall be
10 posted in a location that is freely accessible to members of the
11 public and on the local agency's Internet Web site, if the local
12 agency has one. If requested, the agenda shall be made available
13 in appropriate alternative formats to persons with a disability, as
14 required by Section 202 of the Americans with Disabilities Act of
15 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
16 adopted in implementation thereof. The agenda shall include
17 information regarding how, to whom, and when a request for
18 disability-related modification or accommodation, including
19 auxiliary aids or services, may be made by a person with a
20 disability who requires a modification or accommodation in order
21 to participate in the public meeting.

22 (2) No action or discussion shall be undertaken on any item not
23 appearing on the posted agenda, except that members of a
24 legislative body or its staff may briefly respond to statements made
25 or questions posed by persons exercising their public testimony
26 rights under Section 54954.3. In addition, on their own initiative

1 or in response to questions posed by the public, a member of a
2 legislative body or its staff may ask a question for clarification,
3 make a brief announcement, or make a brief report on his or her
4 own activities. Furthermore, a member of a legislative body, or
5 the body itself, subject to rules or procedures of the legislative
6 body, may provide a reference to staff or other resources for factual
7 information, request staff to report back to the body at a subsequent
8 meeting concerning any matter, or take action to direct staff to
9 place a matter of business on a future agenda.

10 (b) Notwithstanding subdivision (a), the legislative body may
11 take action on items of business not appearing on the posted agenda
12 under any of the conditions stated below. Prior to discussing any
13 item pursuant to this subdivision, the legislative body shall publicly
14 identify the item.

15 (1) Upon a determination by a majority vote of the legislative
16 body that an emergency situation exists, as defined in Section
17 54956.5.

18 (2) Upon a determination by a two-thirds vote of the members
19 of the legislative body present at the meeting, or, if less than
20 two-thirds of the members are present, a unanimous vote of those
21 members present, that there is a need to take immediate action and
22 that the need for action came to the attention of the local agency
23 subsequent to the agenda being posted as specified in subdivision
24 (a).

25 (3) The item was posted pursuant to subdivision (a) for a prior
26 meeting of the legislative body occurring not more than five
27 calendar days prior to the date action is taken on the item, and at
28 the prior meeting the item was continued to the meeting at which
29 action is being taken.

30 (c) This section is necessary to implement and reasonably within
31 the scope of paragraph (1) of subdivision (b) of Section 3 of Article
32 I of the California Constitution.

33 (d) For purposes of subdivision (a), the requirement that the
34 agenda be posted on the local agency's Internet Web site, if the
35 local agency has one, shall only apply to a legislative body that
36 meets either of the following standards:

37 (1) A legislative body as that term is defined by subdivision (a)
38 of Section 54952.

39 (2) A legislative body as that term is defined by subdivision (b)
40 of Section 54952, if the members of the legislative body are

1 compensated for their appearance, and if one or more of the
2 members of the legislative body are also members of a legislative
3 body as that term is defined by subdivision (a) of Section 54952.

4 *(e) If a legislative body of a local agency meets in closed session*
5 *as set forth in subdivision (a) of Section 54957, the legislative body*
6 *of a local agency shall also include in the posted agenda, required*
7 *under paragraph (1) of subdivision (a), the first and last names,*
8 *titles, and affiliations of all persons who will be attending the*
9 *closed session meeting and are not a member of the legislative*
10 *body or essential staff to that legislative body.*

11 SECTION 1.

12 SEC. 2. Section 54954.5 of the Government Code is amended
13 to read:

14 54954.5. For purposes of describing closed session items
15 pursuant to Section 54954.2, *except as required in subdivision (e)*
16 *of Section 54954.2*, the agenda may describe closed sessions as
17 provided below. A legislative body or elected official shall not be
18 in violation of Section 54954.2 or 54956 if the closed session items
19 were described in substantial compliance with this section.
20 Substantial compliance is satisfied by including the information
21 provided below, irrespective of its format.

22 (a) With respect to a closed session held pursuant to Section
23 54956.7:

24 LICENSE/PERMIT DETERMINATION

25 Applicant(s): (Specify number of applicants)

26 (b) With respect to every item of business to be discussed in
27 closed session pursuant to Section 54956.8:

28 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

29 Property: (Specify street address, or if no street address, the
30 parcel number or other unique reference, of the real property under
31 negotiation)

32 Agency negotiator: (Specify names of negotiators attending the
33 closed session) (If circumstances necessitate the absence of a
34 specified negotiator, an agent or designee may participate in place
35 of the absent negotiator so long as the name of the agent or
36 designee is announced at an open session held prior to the closed
37 session.)

38 Negotiating parties: (Specify name of party (not agent))

39 Under negotiation: (Specify whether instruction to negotiator
40 will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

~~THREAT TO PUBLIC SERVICES OR FACILITIES~~

~~Consultation with: (Specify name of executive or law enforcement agency and title of officer, or name of applicable agency representative and title)~~

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

1 (No additional information is required in connection with a
2 closed session to consider discipline, dismissal, or release of a
3 public employee. Discipline includes potential reduction of
4 compensation.)

5 (f) With respect to every item of business to be discussed in
6 closed session pursuant to Section 54957.6:

7 CONFERENCE WITH LABOR NEGOTIATORS

8 Agency designated representatives: (Specify names of designated
9 representatives attending the closed session) (If circumstances
10 necessitate the absence of a specified designated representative,
11 an agent or designee may participate in place of the absent
12 representative so long as the name of the agent or designee is
13 announced at an open session held prior to the closed session.)

14 Employee organization: (Specify name of organization
15 representing employee or employees in question)

16 or

17 Unrepresented employee: (Specify position title of unrepresented
18 employee who is the subject of the negotiations)

19 (g) With respect to closed sessions called pursuant to Section
20 54957.8:

21 CASE REVIEW/PLANNING

22 (No additional information is required in connection with a
23 closed session to consider case review or planning.)

24 (h) With respect to every item of business to be discussed in
25 closed session pursuant to Sections 1461, 32106, and 32155 of the
26 Health and Safety Code or Sections 37606 and 37624.3 of the
27 Government Code:

28 REPORT INVOLVING TRADE SECRET

29 Discussion will concern: (Specify whether discussion will
30 concern proposed new service, program, or facility)

31 Estimated date of public disclosure: (Specify month and year)

32 HEARINGS

33 Subject matter: (Specify whether testimony/deliberation will
34 concern staff privileges, report of medical audit committee, or
35 report of quality assurance committee)

36 (i) With respect to every item of business to be discussed in
37 closed session pursuant to Section 54956.86:

38 CHARGE OR COMPLAINT INVOLVING INFORMATION
39 PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY
(Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY BUREAU OF STATE AUDITS

~~SEC. 2.~~

SEC. 3. Section 54957 of the Government Code is amended to read:

54957. (a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including, ~~but not limited to,~~ water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities, with any of the following:

(1) The Governor, ~~and any necessary staff designated by the Governor~~ and his or her staff with direct expertise or authority on the subject matter under discussion.

(2) The Attorney General, or his or her deputies.

(3) The Secretary of California Emergency Management, or its successor agency, or his or her deputies.

(4) The Adjutant General of the California National Guard, or his or her deputies, chief of staff, or Joint Operations Director.

(5) The Commissioner of the California Highway Patrol, or his or her deputies.

(6) The State Public Health Officer, or his or her deputies.

~~(3) A~~

1 (7) *The* district attorney, or his or her deputies.

2 ~~(4)~~

3 (8) An agency counsel, or his or her deputies.

4 ~~(5) A~~

5 (9) *The* sheriff, or his or her deputies.

6 ~~(6)~~

7 (10) A chief of police, or his or her deputies.

8 ~~(7)~~

9 (11) A security consultant.

10 ~~(8)~~

11 (12) A security operations manager.

12 (b) (1) Subject to paragraph (2), this chapter shall not be
13 construed to prevent the legislative body of a local agency from
14 holding closed sessions during a regular or special meeting to
15 consider the appointment, employment, evaluation of performance,
16 discipline, or dismissal of a public employee or to hear complaints
17 or charges brought against the employee by another person or
18 employee unless the employee requests a public session.

19 (2) As a condition to holding a closed session on specific
20 complaints or charges brought against an employee by another
21 person or employee, the employee shall be given written notice of
22 his or her right to have the complaints or charges heard in an open
23 session rather than a closed session, which notice shall be delivered
24 to the employee personally or by mail at least 24 hours before the
25 time for holding the session. If notice is not given, any disciplinary
26 or other action taken by the legislative body against the employee
27 based on the specific complaints or charges in the closed session
28 shall be null and void.

29 (3) The legislative body also may exclude from the public or
30 closed meeting, during the examination of a witness, any or all
31 other witnesses in the matter being investigated by the legislative
32 body.

33 (4) For the purposes of this subdivision, the term “employee”
34 shall include an officer or an independent contractor who functions
35 as an officer or an employee but shall not include any elected
36 official, member of a legislative body, or other independent
37 contractors. This subdivision shall not limit local officials’ ability
38 to hold closed session meetings pursuant to Sections 1461, 32106,
39 and 32155 of the Health and Safety Code or Sections 37606 and
40 37624.3 of the Government Code. Closed sessions held pursuant

1 to this subdivision shall not include discussion or action on
2 proposed compensation except for a reduction of compensation
3 that results from the imposition of discipline.

4 ~~SEC. 3.~~

5 *SEC. 4.* The Legislature finds and declares that Section 2 3 of
6 this act, which amends Section 54957 of the Government Code,
7 imposes a limitation on the public's right of access to the meetings
8 of public bodies or the writings of public officials and agencies
9 within the meaning of Section 3 of Article I of the California
10 Constitution. Pursuant to that constitutional provision, the
11 Legislature makes the following findings to demonstrate the interest
12 protected by this limitation and the need for protecting that interest:

13 Without some freedom to protect sensitive information, security
14 is compromised. Therefore, the health and safety of the people of
15 California are enhanced by giving governing bodies the authority
16 to meet with the Governor in closed meetings to discuss security
17 matters that may include sensitive information.